



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Refer to:

OSB2001-0050

April 10, 2001

Mr. Fred Patron  
Federal Highway Administration  
The Equitable Center, Suite 100  
530 Center St. NE  
Salem, Oregon 97301

Re: Confirmation of the ODOT Fish Passage Program Biological Report as Endangered Species Act and Magnuson-Stevens Act Consultations for the Bump Creek Culvert Replacement Project, Benton County, Oregon

Dear Mr. Patron:

On March 20, 2001, the National Marine Fisheries Service (NMFS) received a biological assessment and request from the Federal Highway Administration (FHWA) for confirmation of the Oregon Department of Transportation (ODOT) fish passage remediation program biological report as a biological opinion under the Endangered Species Act (ESA) and an essential fish habitat consultation under the Magnuson-Stevens Act (MSA) for the Bump Creek culvert replacement action in Benton County, Oregon. The project is located on Bump Creek along Highway 223 (Mile Post 21.6) and is within the Upper Willamette River watershed. The proposed action was designed by ODOT, and is within the scope of actions described in the biological report and is partially funded by the FHWA.

#### ENDANGERED SPECIES ACT

The proposed action and its effects on listed species and critical habitat are described in the individual biological assessment (BA) submitted with the request for consultation on March 20, 2001, the programmatic BA dated March 24, 1998, and the programmatic BA amendment dated January 4, 2000. After reviewing these documents, NMFS finds that no significant differences exist between the proposed action and actions described in the biological report for the ODOT fish passage remediation program, dated January 22, 2001 (attached), nor have there been any significant changes in the information used to prepare the biological report. Therefore, NMFS confirms the biological report as a biological opinion for the Bump Creek Culvert Replacement Project. Pursuant to section 7 of the ESA, this biological opinion includes reasonable and prudent measures with non-discretionary terms and conditions that NMFS believes are necessary and appropriate to minimize the potential for incidental take associated with this project. This concludes formal section 7 consultation for this project.



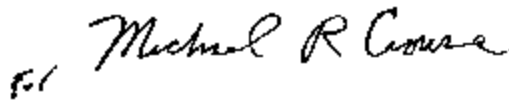
## MAGNUSON-STEVENSON ACT

Information submitted by the FHWA in the individual BA submitted with this request for consultation, the programmatic BA, and the programmatic BA amendment are sufficient for NMFS to conclude that the effects of this project on essential fish habitat (EFH) are likely to be within the range of effects considered in the ESA portion of this consultation. Thus, conservation measures that the FHWA has included as parts of the proposed action and that NMFS has required as reasonable and prudent measures and terms and conditions of these projects are adequate to avoid significant adverse impacts from these projects to EFH. Consequently, NMFS has no additional conservation recommendation to make at this time. This concludes EFH consultation for these projects.

The FHWA must reinitiate ESA and MSA consultation if: (1) The amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect the species or critical habitat in a manner or to an extent not considered in this biological report; (3) the action is subsequently modified in a manner that causes an effect to the species or critical habitat that was not considered in this biological report; or (4) a new species is listed or critical habitat designated that may be affected by the action.

Questions regarding this letter should be directed to Ben Meyer of my staff in the Oregon State Branch Office at 503.230.5425.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Course". To the left of the signature is a small, stylized mark that looks like "f.1".

Donna Darm  
Acting Regional Administrator

cc: Greg Apke - ODOT  
Rose Owens - ODOT  
Elton Chang -FHWA  
Randy Reeve - ODFW  
Molly Cary - ODOT

Enclosure

[Biological Report - Fish Passage Remediation Program](#)